**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 3537 of 1997**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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**PARBATSINH PRABHATSINH JHALA - Petitioner**
**Versus**
**COMMISSIONER OF POLICE & 1 - Respondents**

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**Appearance :**
MR IS SUPEHIA and MR AS SUPEHIA for Petitioner
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondents

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 07/02/2007**

**ORAL JUDGMENT**

1. This petition under Article 226 of the Constitution of India, has been filed by the petitioner for appropriate order directing the

respondents to give him higher scale as per the seniority from the date of appointment i.e. 01.11.1975 which was given to other employees in April, 1992 and also to direct the respondents to give promotion to the petitioner as given to the other employees as per their order dated 22.11.1996.

2. It is the case on behalf of the petitioner, that the petitioner joined Police Department on 01.11.1975 as Armed Police Constable. However, at the relevant time, he was working at Ahmedabad and by order dated 15/01/1985, the petitioner was transferred from Ahmedabad to Kheda North (Dist). It is further stated that the said inter-district transfer was not as request transfer by the petitioner but it was on administrative reasons. It is submitted that as per Government Resolution dated 16.08.1994, the petitioner is entitled to get benefit of higher grade on completion of 9,18 and 27 years and the petitioner is denied benefit of first higher grade on completion of 9 years, as the date of appointment has been considered as 15/11/1985 instead of 01/11/1975. It is submitted that the respondents

have materially erred in ignoring the period between 01/11/1975 to 15/01/1985 for the purpose of atleast grating the benefit of higher grade.

3. Shri Supehia, learned Advocate appearing on behalf of the petitioner has relied upon the reported decision of Division Bench of this Court in the case of ***State of Gujarat & Ors. V/s. Mulchandbhai Lavjibhai Patel & Ors. Reported in 2004 (1)GLR 536*** as well as decision dated 24.07.2001 of the learned Single Judge of this Court in Special Civil Application No. 8076 of 1995 and has further submitted that past service of the petitioner is to be counted for the limited purpose for eligibility for computing the number of years of qualifying service to enable him to claim higher grade under the scheme of Government Resolution dated 16.08.1994. Therefore, it is requested to allow the Special Civil Application and direct the respondents to grant the petitioner benefit of higher grade as per the Government Resolution dated 16.08.1994 considering his date of appointment in department as 01.11.1975 instead of 15.01.1985.

4. Learned Assistant Government Pleader is not in a position to dispute with the controversy that has been raised in the present Special Civil Application, is not covered by the decision of Division Bench of this Court in the case of ***State of Gujarat & Ors. V/s. Mulchandbhai Lavjibhai Patel & Ors.*** *(supra)*. However, he has submitted that if the petitioner is granted higher grade as per Government Resolution dated 16.08.1994, then there is no question of the petitioner for promotion. It is submitted that the petitioner cannot be granted both the reliefs i.e. benefit of higher grade as well as benefit of promotion. Therefore, it is requested to pass appropriate order.

5. Heard learned Advocates appearing on behalf of the respective parties. It is not in dispute that the petitioner joined Police Department as Armed Police Constable on 01.11.1975. However, subsequently, the petitioner was transferred to Kheda by order dated 15.01.1985. It is the case on behalf of the petitioner that it was inter district transfer

due to administrative exigencies and it was not request transfer. There is no denial to the averments made in the petition by way of affidavit-in-reply. As held by the Division Bench of this Court relying on the judgment of the Hon'ble Supreme Court in the case of ***Dwijen Chandra Sarkar v/s. Union of India (AIR 1999 SC 598)*** the past services of the employees is to be counted for the limited purpose for eligibility for computing the number of years of qualifying service to enable them to claim higher grade / scale under the scheme of time – bound promotions.

6. Under the circumstances, the period between 01.11.1975 to 15.01.1985 was atleast required to be considered for the purpose of counting of qualifying service to enable the petitioner to have the benefit of higher grade as per Government Resolution dated 16.08.1994. Under the circumstances, the action of the respondents in not considering the past service of the petitioner i.e. between 01.11.1975 to 15.01.1985 for the purpose of higher grade cannot be sustained and is required to be quashed and set aside.

7. For the reasons stated above, the petition succeeds in part. The respondents are directed to consider the period between 01.11.1975 to 15.01.1985 for the purpose of qualifying service for granting benefit of higher grade as per Government Resolution dated 16.08.1994 and to grant benefit of first higher grade on completion of 9 years counting from 01.11.1975 accordingly. The petitioner will also be entitled to get consequential benefits and second higher grade on completion of 18 years, if in the meantime he has not got promotion. The said exercise will be completed within a period of three months from the date of receipt copy of this order. Rule is made absolute to the above extent. No costs.

**[M.R.Shah, J.]**

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